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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,975	03/01/2002	Jean-Louis H. Gueret	08048.0026-00	2195

7590 07/01/2004

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EXAMINER

DOAN, ROBYN KIEU

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/084,975		GUERET	
	Examiner		Art Unit	
	Robyn Doan		3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-63 is/are pending in the application.
- 4a) Of the above claim(s) 13, 17-19, 28-32, 52-54, 56-60 and 63 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 20-27, 33-51, 61-62 is/are rejected.
- 7) ☒ Claim(s) 14-16 and 55 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>08/02, 02/04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's response to election of species requirements filed 04/22/04 has been entered. Applicant has elected claims 1-12, 114-16, 20-27, 33-51, 55, 61-62; claims 17-19, 28-32, 52-54, 56-60 and 63 have been withdrawn for the examination purpose.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 9, 22-27, 33-50 and 61-62 are rejected under 35 U.S.C. 102(e) as being anticipated by Vasas (6508603).

With regard to claims 1-5, 9, 22-27 and 33-42, Vasas discloses a mascara brush (figs. 1-4) comprising a container (22) comprising a mascara product to apply to eyelashes, a wiper (18), a handle (24) attached to an end of a stem (26), a brush portion connected to one end portion of the stem (44a), the one end of the stem having a longitudinal axis and a brush portion having a free end (at 42) that is not aligned with the longitudinal axis of the one end portion of the stem; the brush portion comprising a twisted wire core (44) having a left hand pitch (figs. 3-4), at least part of the core being curved such that a line tangent to the core at an axial position (see attachment A) along the core being not perpendicular to the longitudinal axis of the one end portion of the

stem; the brush portion further having bristles of different lengths (78a, 80) comprising ends defining an envelope surface being asymmetrical about a midplane of the envelope surface (see attachment B, fig. 3 the long and short bristles defining an asymmetrical surface); the brush portion is formed from a blank comprising a blank core and blank bristles defining a blank surface, an edge of the blank surface being nonrectilinear (see attachment B) and the rectilinear edge portion being outwardly concave (fig. 4). In regard to claims 43-50 and 61-62, the above apparatus is inherently seen in the existence method claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-8, 10-12, 20-21 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vasas.

With regard to claims 4-8, 10-12, 20-21 and 51, Vasas discloses a mascara brush comprising all the claimed limitations in claims 1 and 43 as discussed above except for the blank envelope surface being substantially axially, circularly symmetrical about the longitudinal axis of the core, the envelope surface and the brush portion having a maximum and a minimum cross section locating between axial ends of the

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envelope surface and the brush portion, the nonrectilinear edge portion being located in one of the first third and a last third of the length of the blank envelope surface. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct for the blank envelope surface being substantially axially, circularly symmetrical about the longitudinal axis of the core, the envelope surface and the brush portion having a maximum and a minimum cross section locating between axial ends of the envelope surface and the brush portion, the nonrectilinear edge portion being located in one of the first third and a last third of the length of the blank envelope surface, since such a modification would have involved a mere change in the shape of the component.

Claims 14-16 and 55 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dumler is cited to show the state of the art with respect to a mascara brush.

The drawings filed 03/01/02 have been approved by the Examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (703) 306-

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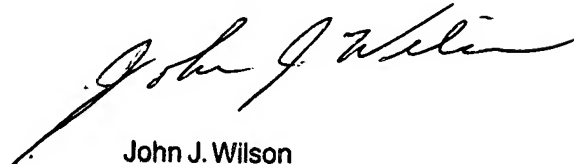
9182. The examiner can normally be reached on Mon-Fri 9:30-7:00; alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robyn Kieu Doan
Examiner
June 25, 2004



John J. Wilson
Primary Examiner

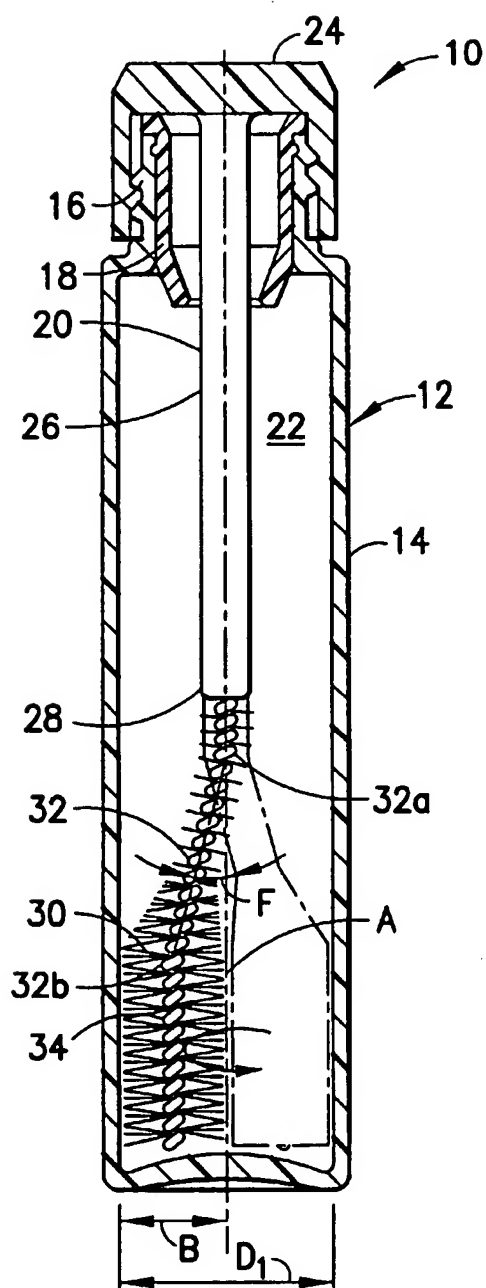


FIG. 1

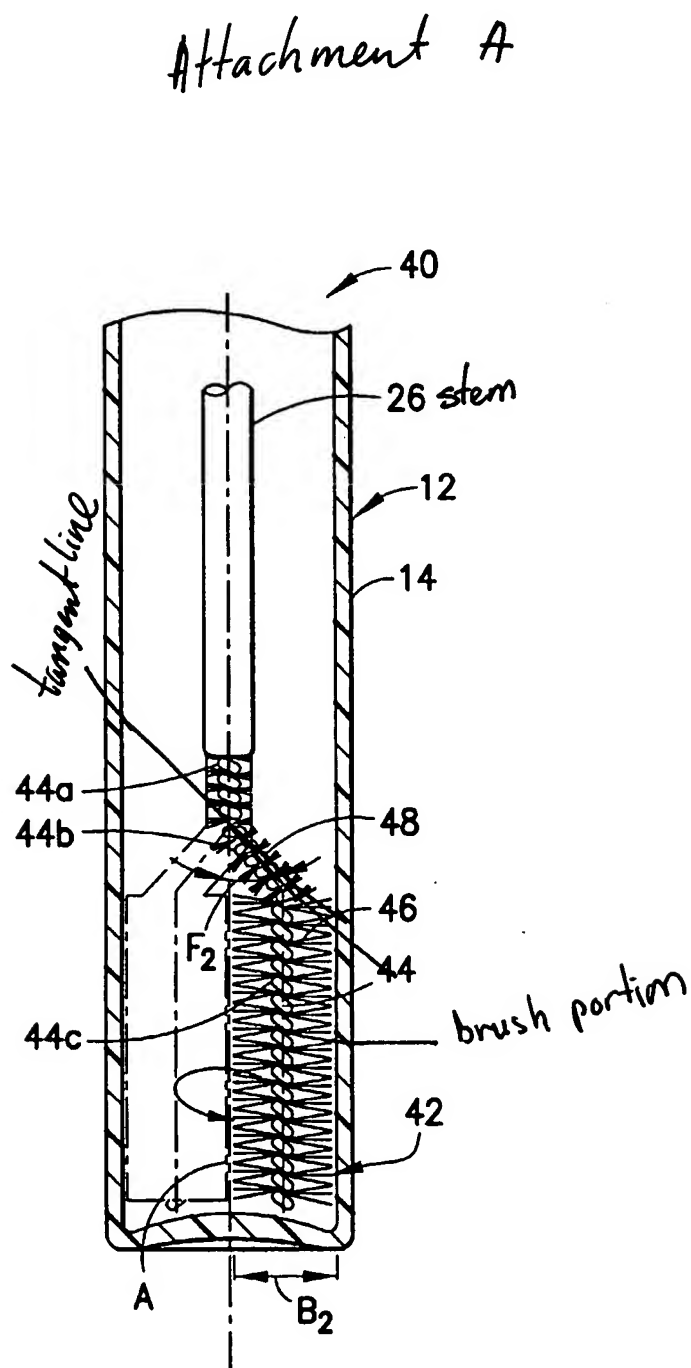


FIG. 2

Attachment B

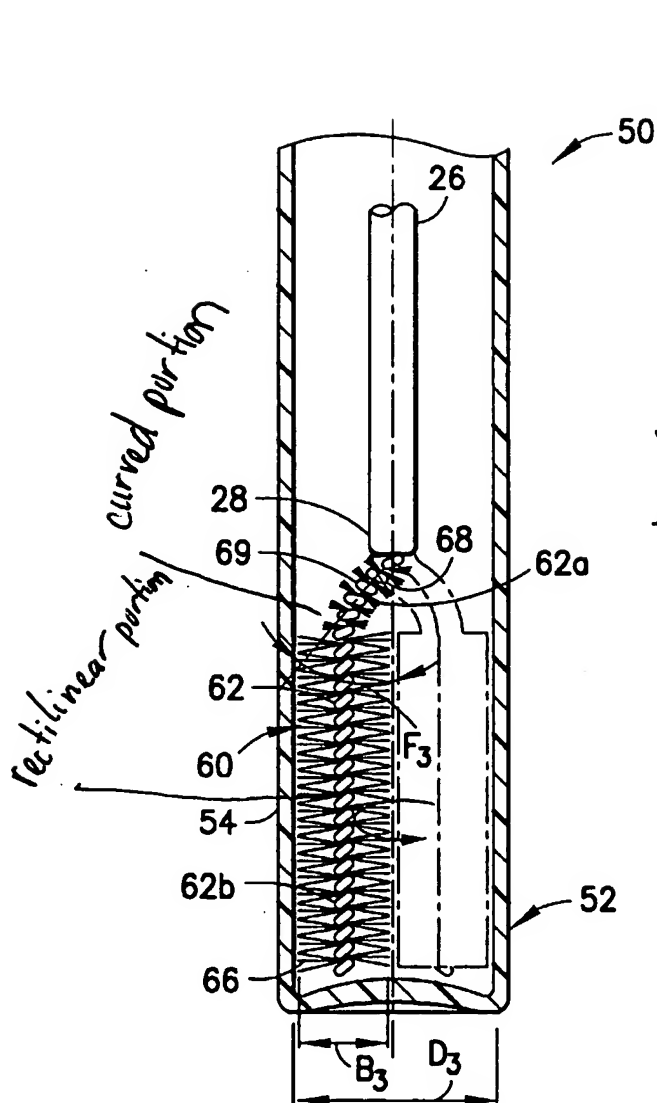


FIG. 3

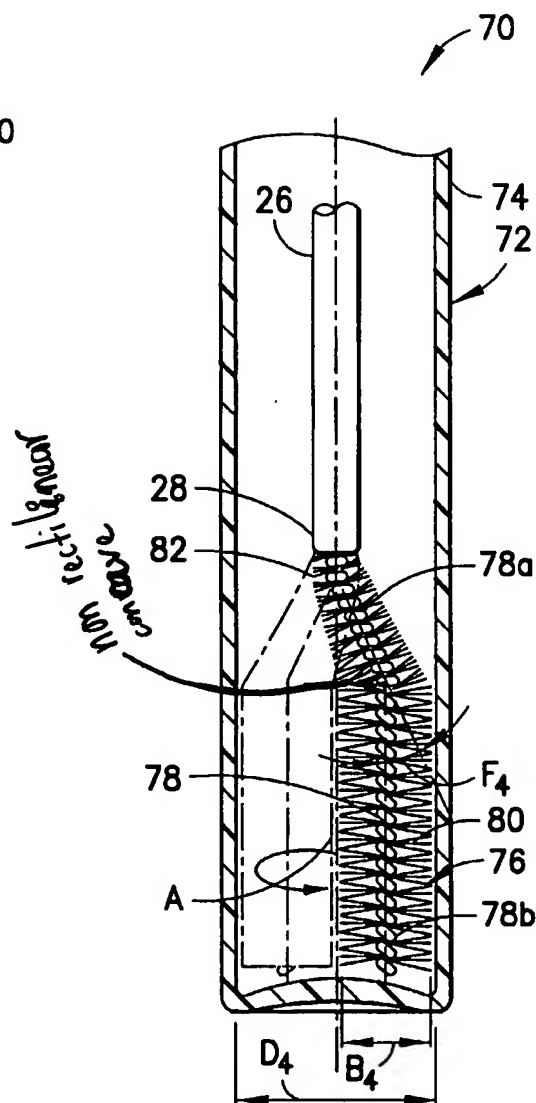


FIG. 4